

## **REMARKS**

Reconsideration of the subject application in view of the present amendment is respectfully requested.

By the present amendment, the drawings (the Figure) has been amended to show a feature discussed in the specification. The specification has been amended to provide antecedent for the originally claimed subject matter. Claims 1, 6 and 9 have been cancelled. Claim 15 has been added. Claims 2, 5, 10, 11, and 13 have been amended to provide their proper dependency.

Based on the foregoing amendment and the following remarks, the application is deemed to be in condition for allowance, and action to that end is respectfully requested.

### **I. Objection to the Drawings.**

The Examiner objected to the drawings under 37 C.F.R. §1.83(a) for not showing every feature specified in the claims, pointing out that the

drawing does not show pivotal movement of the actuation element within an angular region from 30° to 180°. The new drawing, which is being submitted herewith, shows this feature. Approval of the amended Figure is respectfully requested. It is further respectfully requested that the objection to the drawings be withdrawn.

## **II. Claim Objections and Rejection**

### **Ila. Claim Objections**

The Examiner objected to claim 6 for not having adequate support in the disclosure, and to claim 11 for confusing language therein. It is respectfully submitted that the foregoing amendments to the drawings and the specification, and the amendment of claim 11 overcome the Examiner's objections to the subject matter of claims 6 and 11.

### **II. b Claim Rejection.**

The Examiner rejected claims 1 through 12 under 35 U.S.C. §102 (b) as being anticipated by and claims 13 and 14 under 35 U.S.C. §103(a) as being unpatentable over German Patent Publication DE 3220914A1 (DE'914). Claims 1 through 12 were also rejected as being unpatentable by German Patent Publication DE 19514708C1 (DE'708). It is respectfully submitted that claims 15 and 2-5, 7, 8, and 10-14 are patentable over the cited

references. Specifically, claim 15 recites that the contactless switch (4) includes movable switching means (7) which is formed as a permanent magnet, and an actuating element (6) for actuating the switching means from outside.

No movable switching means is disclosed in DE '914. DE '914 discloses stationary permanent magnets (30 and 33) and a rotatable cover plate (38) that acts as a magnetic shield (English translation, page 3, lines 26-31).

The present invention, as defined by claim 15, is also not disclosed in DE '708. DE '708, which corresponds to U.S. Patent No. 5,714,728, discloses "plunger-like operating" actuation means for moving the switching means (permanent magnets) linearly "in the direction of the longitudinal axis" of the device (see claim 1).

A rejection based on U.S.C. § 102 as in the present case, requires that the cited reference disclose each and every element covered by the Claim. Electro Medical Systems S.A. v. Cooper Life Sciences, 32 U.S.P.Q. 2d 1017, 1019 (Fed. Cir. 1994); Lewmar Marine Inc. v. Barient Inc., 3 U.S.P.Q. 2d 1766, 1767-68 (Fed. Cir. 1987); Verdegaal Bros., Inc. v. Union Oil Co., 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987). The federal Circuit has mandated that 35 U.S.C. § 102 requires no less than "complete anticipation . . . [a]nticipation requires the presence in a single prior art disclosure of all

elements of a claimed invention arranged as in the claim.” Connell v. Sears, Roebuck & Co., 220 U.S.P.Q. 193; 198 (Fed. Cir. 1983); See also, Electro Medical Systems, 32 U.S.P.Q. 2d at 1019; Verdegaal Bros., 2 U.S.P.Q. 2d at 1053.

Since both DE ‘914 and DE ‘708 fail to disclose each and every feature of independent Claim 15, DE ‘914 and DE 708, as a matter of law, do not anticipate the present invention, as defined by said independent claim.

In view of the above, it is respectfully submitted that DE ‘914 and DE ‘708 do not anticipate or make obvious the present invention as defined in Claim 15, and the present invention is patentable over DE ‘914 and DE ‘708.


Claims 2-5 and 7, 8 and 10-14 depend on Claim 15 and are allowable for the same reasons Claim 15 is allowable and further because of specific features recited therein which, when taken alone and/or in combination with features recited in Claim 15 are not disclosed or suggested in the prior art.

### **CONCLUSION**

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

  
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Date: November 5, 2004  
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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail and addressed to: Commissioner for Patents, P.O Box 1450, Alexandria, VA 22313-1450, on November 5, 2004.

  
Alexander Zinchuk

**In the Drawings:**

Replace the pending drawing figure with a new figure enclosed  
herewith.